IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 281 OF 2006.

Malgonda Bosgonda Patil and others. ... Appellants.

Versus.

Smt.Savitri Pargonda Loni & others. ... Respondents.

Shri T.S.Ingale for the Appellants.

CORAM : ABHAY S.OKA, J.

DATED : 19th April, 2006.

P.C.:

1. Submissions of the learned Advocate for the Appellant are heard. The Appellants are the original Opponents Nos.4 and 5 in a claim petition filed under section 110A of the Motor Vehicles Act, 1939. The claim petition was filed in the year 1987 and was decided on 10th December 1998. The present Appeal was preferred in the year 1999 which is coming up today for admission as the Application for condonation of delay remained pending in the meanwhile.

2. By the impugned Judgment and Order, the two claim petitions arising out of the same accident have been decided by the Tribunal. The present Appeal is confined to the Judgment and Award made in Claim Petition No.368 of 1987. The said claim petition is filed by the Respondents Nos.1 to 6 claiming compensation on account of death of one Pargonda Loni. The Respondent No.1 is widow of the deceased and

Respondent No.2 is the mother of the deceased. Respondents Nos.3 to 6 are the children of the deceased.

3. The deceased was working as a Cleaner of a Bajaj Tempo bearing Registration No.MWE-2047. There are two vehicles involved in the accident. One is the said Bajaj Tempo and the other was a Tractor with a trolly. The case appears to be that the Tractor and Trolly were parked on the road in the night and the driver of the Tractor had not put on the parking light. As a result the Tempo gave a dash to the Tractor and the Trolly. The Tribunal found that the accident occurred due to the composite negligence on the part of the drivers of the Tempo and the Tractor. The Tribunal awarded total compensation of Rs.77,400/- together with interest thereon at the rate of 12% per annum. The Tribunal apportioned the liability of the Appellants (original Opponents Nos.4 and 5) and the Respondents Nos.7 to 9 in the proportion of 80% and 20%. The Insurance company of the Tempo was exonerated on account of the breach of policy conditions committed by the Appellant No.1 who was the owner of the Tempo.

4. The learned Counsel for the Appellant submitted that the breach of conditions of the policy was not established by the Insurance company and therefore, the Insurance company could not have been exonerated. He submitted that the burden of proving the breach was on

the Insurance company which was not discharged by the Insurance company.

5. I have considered the submissions. The learned Member of the Tribunal held that the Tempo was undisputably registered as a goods transport carrier. The learned Judge recorded a finding that the Appellant No.1 was using the said Tempo for carrying passengers by accepting hire charges. The learned member of the Tribunal relied upon the evidence of witness Sadashiv for coming to the conclusion that the Appellant No.1 was using the Tempo for transporting passengers by accepting hire charges. Considering the oral and documentary evidence on record, a finding has been recorded that there was breach of policy conditions on the part of the Appellant No.1. However, the findings as regards the breach of conditions of policy is based on oral and documentary evidence on record which cannot be interfered with.

6. The Tractor and Trolly were admittedly stationary and the driver of Tempo dashed against the Tractor and Trolly. The only fault of the driver of the Tractor and Trolly was that he had not put on the parking lights and that is the reason why the apportionment has been made between 80% and 20% between the owner of the Tempo and the owner of the Tractor. The total compensation awarded is only Rs.77,400/- in

case of a fatal accident. The accident has taken place in May 1987. The Claim petition was decided in December 1998. No case is made out for interference with the impugned Judgment and Award. The Appeal is dismissed with no order as to costs.

Judge.